



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90421; File No. SR-CboeBYX-2020-032]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Automate the Exchange’s Process for Initiating the Re-opening of a Security Listed on the New York Stock Exchange LLC Following the Resumption of Trading After a Halt, Suspension, or Pause During the Early Trading Session, Pre-Opening Session, or After Hours Trading Session

November 13, 2020

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 5, 2020, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to automate the Exchange’s current process for initiating the re-opening of a security listed on the New York Stock Exchange LLC following the resumption of trading after a halt, suspension, or pause during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to automate the Exchange's current process for initiating the re-opening of securities listed on the New York Stock Exchange LLC ("NYSE") following the resumption of trading after a halt, suspension, or pause during the Early Trading Session,³ Pre-Opening Session,⁴ or After Hours Trading Session.⁵ BYX Rule 11.23 describes the Exchange's opening process for securities listed on other national securities exchanges, including the process for re-opening such securities following the resumption of trading after a halt, suspension, or pause. Although the Exchange generally employs an automated process for re-opening securities listed on other exchanges, there are situations where manual intervention is currently needed to initiate the Exchange's re-opening process. Specifically, manual intervention is currently needed for the Exchange to initiate its re-opening process in NYSE-listed securities that resume trading after a halt, suspension, or pause when such resumption of trading occurs outside of regular trading hours at times when the Exchange is open for either pre- or post-market trading but NYSE does not trade its listed securities. The

³ The term "Early Trading Session" means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. See BYX Rule 1.5(ee).

⁴ The term "Pre-Opening Session" means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. See BYX Rule 1.5(r).

⁵ The term "After Hours Trading Session" means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. See BYX Rule 1.5(c).

proposed rule change would implement an automated process for initiating the re-opening of trading on the Exchange in these circumstances.

Generally, the Exchange's re-opening process is designed to provide an execution at the midpoint of the national best bid and offer ("NBBO") following the initiation of trading on the applicable listing exchange. Specifically, as described in BYX Rule 11.23(e)(1), the Exchange's re-opening process occurs at the midpoint of the: (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. In either case, the Exchange must wait for the listing exchange to commence trading before initiating its re-opening procedures.

NYSE operates two trading sessions each day: (1) the "core trading session" between 9:30 a.m. ET to 4:00 p.m. ET, during which all securities are available for trading;⁶ and (2) the "early trading session" between 7:00 a.m. ET and the commencement of the core trading session, during which only securities that trade via unlisted trading privileges are available for trading.⁷ NYSE does not trade its listed securities during its early trading session, *i.e.*, prior to the beginning of regular trading hours, nor does it trade any securities after the end of regular trading hours. As a result, since the Exchange's normal process for re-opening securities listed on other exchanges after a halt, suspension, or pause requires trading to commence on the listing exchange, the Exchange cannot use this process for NYSE-listed securities that resume trading during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

⁶ See NYSE Rule 7.34(a)(2). NYSE's core trading session for its listed securities begins with its opening auction and ends with its closing auction if one is conducted. *Id.*

⁷ See NYSE Rule 7.34(a)(1).

At the same time, BYX Rule 11.23(e)(2) provides that where neither of the conditions required for the initiation of the Exchange's automated re-opening process have occurred, trading in the security may be resumed on the Exchange at its discretion. The Exchange therefore periodically invokes its authority pursuant to this rule to manually initiate the resumption of trading in NYSE-listed securities outside of regular trading hours.⁸ However, initiating trading on the Exchange in this manner requires manual intervention by Exchange staff. The Exchange believes that it would be in the interest of market participants and investors to instead automate its process for initiating trading in this situation and avoid the need for manual intervention.

Current Process for NYSE-listed Securities Re-Opened in Pre- and Post-Market

As discussed, the Exchange currently employs a manual process to initiate the resumption of trading in NYSE-listed securities outside of regular trading hours. This manual process requires personnel from the Exchange's Trade Desk to become aware of, and react to, NYSE's determination to lift a trading halt in one of their listed securities.⁹ Typically, this occurs in one of two ways. First, the Trade Desk performs proactive monitoring of halt notifications from NYSE and subsequent resumptions during the After Hours Trading Session.¹⁰ If a security is halted by NYSE during regular trading, Trade Desk personnel will monitor internal tools beginning at 4:00 p.m. ET to identify whether NYSE has lifted the halt. Second, even with the proactive monitoring performed by the Trade Desk, there may be instances where the Exchange

⁸ The Exchange estimates that it currently invokes its authority under this rule to manually initiate a re-opening in NYSE-listed securities a handful of times each month.

⁹ Section 203.07 of NYSE's Listed Company Manual describes its trading halt procedures, and provides NYSE with discretion to declare a material news halt in its listed securities, as well as to lift such a halt when it determines that trading should resume. As a matter of practice, NYSE may exercise its discretion to lift a trading halt in its listed securities outside of its own hours for trading such securities. In that event, NYSE would disseminate a resume message through the SIP, which would permit trading to resume on other national securities exchanges, including the Exchange.

¹⁰ Although it is possible for a resumption to take place in the Early Trading and Pre-Opening Sessions, Trade Desk personnel do not monitor for resumptions in those trading sessions as this scenario normally occurs in the After Hours Trading Session.

has not immediately initiated the manual re-opening of a security that has resumed trading. In such circumstances, Exchange members may reach out to the Trade Desk when they notice that their orders are not reflected in the market. In either case, Trade Desk personnel would check internal tools to confirm that the security is no longer halted, and would routinely invoke the authority described in the paragraph above to initiate the re-opening process on the Exchange after identifying that there are quotes available in the security on other exchanges. The Exchange believes that this manual process is inefficient, and members have also reached out to the Trade Desk with requests that the Exchange replace this process with a more efficient automated process. As a result, the Exchange is proposing to automate its process for initiating trading in this situation to avoid the need for manual intervention by Exchange staff.

Proposed Automated Process for Initiating the Exchange's Re-Opening

As proposed, the Exchange would replace the manual process described above with automated procedures that would automatically resume trading after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after the halt, suspension, or pause.¹¹ This change would allow the Exchange to avoid the need for Trade Desk staff to monitor for resumption messages, and would allow members' orders to be automatically reflected in the market, while continuing to ensure that the Exchange's re-opening is tied to the existence of a market in the security on a national securities exchange(s).¹² With this change, the Exchange would continue to re-open trading in NYSE-listed securities in the same manner that it is able to under BYX Rule 11.23(e)(2) today, but would not have to rely on

¹¹ The Exchange utilizes a combination of direct feeds and the applicable securities information processor ("SIP") feeds to determine the NBBO in a security. See BYX Rule 11.26. In addition, such NBBO information, as well as applicable halt and resume messages, are disseminated to market participants through the SIP feeds during the pre- and post-market trading hours of all U.S. equities exchanges.

¹² Pursuant to Regulation NMS, the NBBO in a given security is established by the best bid and best offer in such security calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. See 17 CFR § 242.600(b)(43). As such, an NBBO may be established when one or more national securities exchanges are disseminating quotations in an equity security.

manual procedures for initiating the resumption of trading. Specifically, rather than conducting the standard midpoint re-opening described in BYX Rule 11.23(e)(1) when the listing exchange has not established a market in the security, the Exchange would continue to follow the process described in BYX Rule 11.23(e)(2), without the need for manual intervention. Thus, as is the case following the manual initiation of the re-opening of trading in a security on the Exchange, orders would be processed using the “contingent open” procedures described in BYX Rule 11.23(d), which provides that orders are to be handled in time sequence and placed on the BYX Book, routed, cancelled, or executed in accordance with the terms of the order.¹³

In the event that there is no available NBBO in the security, the proposed automated procedures would not resume trading on the Exchange, but the Exchange would retain the ability to manually resume trading at its discretion pursuant to current BYX Rule 11.23(e)(2). To increase transparency around when the Exchange could invoke this discretion, the Exchange proposes to amend BYX Rule 11.23(e)(2) to specifically state that the discretion provided pursuant to this rule applies when a security has not otherwise been re-opened for trading on the Exchange pursuant to Proposed BYX Rule 11.23(e)(3). This change would not substantively modify the scope of the discretion provided pursuant to BYX Rule 11.23(e)(2). However, the Exchange believes that modifying the rule in this manner would serve to increase transparency by specifically identifying the times when this discretion is not relevant due to the fact that the Exchange has successfully re-opened the security using its automated procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a

¹³ See BYX Rule 11.23(e)(2),(d).

¹⁴ 15 U.S.C. § 78f(b).

¹⁵ 15 U.S.C. § 78f(b)(5).

national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Today, Trade Desk staff must manually intervene to initiate the re-opening on the Exchange of NYSE-listed securities following the resumption of trading after a halt, suspension, or pause, if the security resumes trading during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session. Although NYSE may trade securities pursuant to unlisted trading privileges prior to regular trading hours, it does not offer pre- or post-market trading for its listed securities. Since the Exchange's current rules require trading to have commenced on the primary listing market in order to initiate the Exchange's automated process for re-opening securities following a halt, suspension, or pause, the Exchange is forced to periodically invoke manual procedures to resume trading these securities pursuant to unlisted trading privileges. The Exchange believes, however, that an automated process would be more consistent and reliable for market participants and investors as such a process would not rely on manual intervention by Trade Desk staff before the Exchange can resume trading. In addition to generally increasing efficiency of the re-opening process, the Exchange believes that the proposed automated procedures would reduce the need for members to contact the Trade Desk with questions about the status of their orders. Further, such a process would be responsive to member requests to improve on the inefficient manual process currently employed.

The proposed rule change would promote the public interest and the protection of investors by eliminating the need for manual intervention and replacing it with a more consistent procedure that would be applied by its trading systems on an automated basis. The proposed change would not impact the process by which the security would be re-opened, which would continue to follow the "contingent open" procedures used today. However, instead of relying on Trade Desk staff to manually re-open trading in the security, trading would resume on the Exchange once one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after the halt, suspension, or pause. This condition is

designed to ensure that a market has been established in the security prior to resuming trading on the Exchange, and mirrors the steps that Trade Desk personnel would conduct today to verify that there is a market in the security on one or more other exchanges before manually initiating a re-opening. Specifically, trading on the Exchange would not resume until one second after an NBBO has been established in the security following the resumption of quoting on at least one other national securities exchange. The Exchange believes that resuming trading once this condition has been satisfied would ensure that trading can be resumed in an automated and efficient fashion, while also ensuring that the re-opening of trading on the Exchange continues to be tied to the existence of an established market in the security on one or more other exchanges in the absence of trading on the primary listing market during the pre- and post-market. In addition, the Exchange would continue to have the authority to manually initiate the re-open of trading pursuant to BYX Rule 11.23(e)(2), which would allow the Exchange to re-open trading in the event that trading is not re-opened pursuant to its automated procedures. The proposed amendments to BYX Rule 11.23(e)(2) would increase the transparency of that rule by specifically noting that this discretion would be used when the Exchange is not otherwise able to re-open trading in an automated fashion under its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate a more efficient re-opening process in situations where the Exchange's current rules would require unnecessary and inefficient manual intervention, and is not designed to address any competitive issues. The Exchange therefore does not believe that the proposed rule change would have any significant impact on competition. Rather than impact the competitive environment, the proposed rule change would benefit members and investors by eliminating the need for manual intervention when initiating the

Exchange's re-opening process for NYSE-listed securities that resume trading during the Early Trading Session, Pre-Opening Session, or After Hours Trading Session.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2020-032 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2020-032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2020-032 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).